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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,109	09/24/2003	Thomas M. Kollars JR.	M1077.70003US00	7166

7590 09/13/2004

David Wolf  
Wolf, Greenfield & Sacks, P.C.  
600 Atlantic Avenue  
Boston, MA 02210

EXAMINER

ARK, DARREN W

ART UNIT PAPER NUMBER

3643

DATE MAILED: 09/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/670,109

Applicant(s)

KOLLARS ET AL.

Examiner

Darren W. Ark

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 10-13, 18, 22 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 14-17, 19-21 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/17/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 10-13, 18, 22, 23 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/22/2004. In regard to claim 11, this claim recites "a wick" which is represented in Fig. 9 which is non-elected Species IV.

### *Drawings*

2. The drawings are objected to because "The entire trap sits upon a round base that includes slots and adhesive strips" is not shown in the Figures as stated at Page 14, lines 15 & 16. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled

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"Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The disclosure is objected to because of the following informalities:

Page 13, lines 24 & 25, the phrase "skirt 14 if it is placed on a surface onto its inner surface" is unclear.

Page 14, lines 15 & 16, the sentence "The entire trap sits upon a round base that includes slots and adhesive strips" is unclear since it is not directed to any previously discussed structure.

Page 21, line 11, "(Figs. 15, 16)" is unclear since there is neither a Fig. 15 or 16.

Page 21, line 23, the term "hair" should possibly be changed to "air".

Appropriate correction is required.

### ***Claim Objections***

4. Claim 9 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 9 recites the phrase

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"a surface on which an adhesive...on said surface" which was previously recited in the last three lines of claim 7.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 3, 5, 7-9, 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 3, the terms "one substance" and "the other substance" render the claim vague and indefinite since "at least two chemical compositions" was previously set forth in claim 1.

In regard to claim 7, the term "openings in the container" render the claim vague and indefinite since "first and second containers" were previously set forth.

In regard to claim 20, the preamble or the body of the claim renders the claim vague and indefinite since the basic structure in order for the device to perform the function of trapping insects has not been set forth.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

8. Claims 1, 2, 6, 7-9, 14, 24 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Simchoni et al. 6,516,559.

Simchoni et al. discloses reacting at least two chemical compositions (yeast, sucrose, & water; also peptone, acetone, or lactic acid may be added to the fermentation [see col. 2, lines 24-26 & col. 5, Table 4]) to generate CO<sub>2</sub> over a time of at least about several hours (see Examples 1-7 wherein testing occurred over hours or days) in excess of ambient levels of CO<sub>2</sub> in the atmosphere, sufficient to be detected by insects and arthropods (attracts them to the trap), and trapping the insects (adhesive on 22) for disposition.

In regard to claim 7, Simchoni et al. discloses first and second containers (yeast may be in a capsule & vessel 24), an opening allowing generated gas to escape (14, mouth of 24, 26, submerged end of tube opposite 26), and a member associated with one of the containers and having a surface on which an adhesive is applied (22).

In regard to claim 14, Simchoni et al. discloses a base (22; base and hood are not differentiated, ie. could be the same structure; also adhesive is not being positively recited, therefore the structure of Simchoni et al. is capable of receiving adhesive at these two locations), a container (yeast in capsule), a second container (24), a hood (12), and a connector (fermentable substrate or tube with 26).

9. Claims 1-6, 19, 21 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Brittin et al. 6,209,256.

Brittin et al. discloses reacting at least two chemical compositions (an acid and a base; see col. 4, lines 11-end & col. 5, lines 1-18) to generate CO<sub>2</sub> over a time of at least several hours (see Example 1 wherein the device is used overnight) at levels in excess of ambient levels of CO<sub>2</sub> (attracts them to 18) and trapping insects (via surfactant in 18; also 16 could be a resinous solid trapping media).

In regard to claim 3, Brittin et al. discloses a composition including baking soda and the other substance include water (acids are placed directly within the trapping media 16 which is an aqueous solution).

In regard to claim 4, Brittin et al. also discloses the use of lactic acid.

In regard to claim 21, Brittin et al. discloses an attractant in the form of a colored member (12) with a white color (to attract mosquitoes).

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10. Claims 1-4 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Waters, Jr. 4,506,473.

Waters, Jr. discloses at least two chemical compositions to generate CO<sub>2</sub> (carbonate salt and aqueous acid solution) and a trapping the insects (at 11).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simchoni et al. 6,516,559 in view of Brittin et al. 6,209,256 or Waters, Jr. 4,506,473.

Simchoni et al. discloses the use of a fermentable substrate comprising sugar in an aqueous medium (water) and the use of lactic acid as an attractant in the fermentation mixture, but does not disclose one substance comprising baking soda/sodium bicarbonate. Brittin et al. and Waters, Jr. disclose one substance comprising baking soda/sodium bicarbonate (baking soda OR see col. 2, lines 31 & 32) and the other comprises water and/or a weak acid (in 16 OR aqueous acid solution in col. 2, lines 45-51). It would have been obvious to a person of ordinary skill in the art to modify the device of Simchoni et al. such that it utilizes one substance comprising baking soda and the other comprising water and/or a weak acid in view of Brittin et al. or



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Waters, Jr. in order to produce CO<sub>2</sub> using means which do not rely on yeast which may not stay active after being stored for long periods of time.

13. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simchoni et al. 6,516,559 in view of Brittin et al. 6,209,256 or Waters, Jr. 4,506,473 and Carter 6,546,667.

Simchoni et al. discloses the use of a fermentable substrate comprising sugar in an aqueous medium (water) and the use of lactic acid as an attractant in the fermentation mixture, but does not disclose one substance comprising baking soda/sodium bicarbonate. Brittin et al. and Waters, Jr. disclose one substance comprising baking soda/sodium bicarbonate (baking soda OR see col. 2, lines 31 & 32) and the other comprises water and/or a weak acid (in 16 OR aqueous acid solution in col. 2, lines 45-51). It would have been obvious to a person of ordinary skill in the art to modify the device of Simchoni et al. such that it utilizes one substance comprising baking soda and the other comprising water and/or a weak acid in view of Brittin et al. or Waters, Jr. in order to produce CO<sub>2</sub> using means which do not rely on yeast which may not stay active after being stored for long periods of time.

Simchoni et al. and Brittin et al. or Waters, Jr. do not disclose a quantity of urea. Carter discloses a lure composition with a quantity of urea (see col. 2, lines 51-end & col. 3, lines 1-38). It would have been obvious to a person of ordinary skill in the art to modify the attractant of Simchoni et al. and Brittin et al. or Waters, Jr. such that it utilizes urea in view of Carter in order to provide an attractant that produces ammonia which would serve to attract particular species of insects which seek out ammonia.

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14. Claims 15, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simchoni et al. 6,516,559.

Simchoni et al. discloses a tube (12) with an inner side capable of receiving adhesive, but does not disclose a hood being frusto conic in shape. It would have been an obvious matter of design choice to make the hood into a frusto conic shape, since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design and it appears that the device of Simchoni et al. performs equally as well.

In regard to claim 17, Simchoni et al. discloses a skirt (22; skirt is not being particularly claimed).

15. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Simchoni et al. 6,516,559 in view of Brittin et al. 6,209,256 and Heath et al. 5,907,923.

Simchoni et al. discloses an opening (14) spaced from the containers, but does not disclose the hood with a plurality of holes. Brittin et al. discloses a hood/container (12) with a plurality of openings (12 may have small apertures) to allow the attractant to be emitted from the openings and which also allow the selected insect to enter the container (12). It would have been obvious to a person of ordinary skill in the art to modify the hood of Simchoni et al. such that it has holes in view of Brittin et al. in order to allow the attractant CO<sub>2</sub> to disperse and attract insects and admit them at more than one location.

Simchoni et al. does not disclose the one container having a surface with fluorescent or UV reflective or near-infrared reflective material. Heath et al. discloses a

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container (12) having a surface with fluorescent material (fluorescent green, yellow or orange) and the outer surface being coated with adhesive. It would have been obvious to a person of ordinary skill in the art to color the one container of Simchoni et al. such that it is fluorescent in view of Heath et al. in order to provide a visual attractant which will draw the desired insects to the trap.

16. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brittin et al. 6,209,256 in view of Carter 6,546,667.

Brittin et al. discloses the use of an acid in an aqueous solution (16) and also the use of lactic acid, wherein the acid solution is positioned to be delivered to the lactic acid (in solution) in incremental amounts (can react accordingly, no structure is being recited which defines over the reaction process in Brittin et al.), but does not disclose a quantity of urea. Carter discloses a lure composition with a quantity of urea (see col. 2, lines 51-end & col. 3, lines 1-38). It would have been obvious to a person of ordinary skill in the art to modify the attractant of Brittin et al. such that it utilizes urea in view of Carter in order to provide an attractant that produces ammonia which would serve to attract particular species of insects which seek out ammonia.

17. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters, Jr. 4,506,473 in view of Carter 6,546,667.

Waters, Jr. discloses the use of a source of liquid (17 inside 13) comprising a weak acid positioned to be delivered to a carbonate salt, but does not disclose a quantity of urea. Carter discloses a lure composition with a quantity of urea (see col. 2, lines 51-end & col. 3, lines 1-38). It would have been obvious to a person of ordinary

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skill in the art to modify the attractant of Brittin et al. such that it utilizes urea in view of Carter in order to provide an attractant that produces ammonia which would serve to attract particular species of insects which seek out ammonia.

### ***Conclusion***

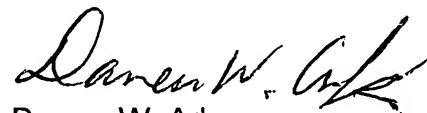
18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Crisanti 4,930,251 discloses an adhesive insect trap comprising an attractant odor producing substance comprising a molasses fragrance mixed with sugar and an ammonia producing material; Floyd discloses an essence for attracting insects (21) comprising ammonia mixed with a liquid carrier; Pohlman 2,645,877 discloses an insect trap painted with a plate (16) coated with a thin layer of fluorescent paint consisting of blue toner colored solid pigment particles (chemiluminescent; see col. 3, lines 1-45).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark  
Primary Examiner  
Art Unit 3643

DWA